

Joshua B. Swigart, Esq. (SBN: 225557)  
 josh@westcoastlitigation.com  
 Robert L. Hyde, Esq. (SBN: 227183)  
 bob@westcoastlitigation.com  
**Hyde & Swigart**  
 411 Camino Del Rio South, Suite 301  
 San Diego, CA 92108-3551  
 Telephone: (619) 233-7770  
 Facsimile: (619) 297-1022

**FILED**

10 MAR 26 PM 4:16

CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

BY: *SY*

DEPUTY

Attorneys for the Plaintiff

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

<p>Victor Catala</p> <p>Plaintiff,</p> <p>v.</p> <p>Midland Credit Management, Inc.,              and Ocwen Loan Servicing, LLC</p> <p>Defendants.</p>	<p>Case Number:  <b>10 CV 0662 WQH</b> <b>WMC</b></p> <p><b>Complaint For Damages</b></p> <p><b>Jury Trial Demanded</b></p>
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**INTRODUCTION**

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

**ORIGINAL**

1 to insure that those debt collectors who refrain from using abusive debt  
2 collection practices are not competitively disadvantaged, and to promote  
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system  
5 and grantors of credit to consumers are dependent upon the collection of just  
6 and owing debts and that unfair or deceptive collection practices undermine  
7 the public confidence that is essential to the continued functioning of the  
8 banking and credit system and sound extensions of credit to consumers. The  
9 Legislature has further determined that there is a need to ensure that debt  
10 collectors exercise this responsibility with fairness, honesty and due regard  
11 for the debtor's rights and that debt collectors must be prohibited from  
12 engaging in unfair or deceptive acts or practices.

13 3. Victor Catala, (Plaintiff), through Plaintiff's attorneys, brings this action to  
14 challenge the actions of Midland Credit Management, Inc., ("Midland") and  
15 Ocwen Loan Servicing, LLC, ("Ocwen") or collectively referred to as  
16 "Defendants", with regard to attempts by Defendants to unlawfully and  
17 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused  
18 Plaintiff damages.

19 4. Plaintiff makes these allegations on information and belief, with the exception  
20 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
21 Plaintiff alleges on personal knowledge.

22 5. While many violations are described below with specificity, this Complaint  
23 alleges violations of the statutes cited in their entirety.

24 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant  
25 were knowing and intentional, and that Defendant did not maintain  
26 procedures reasonably adapted to avoid any such violation.

**JURISDICTION AND VENUE**

7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

8. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

9. Because Defendants do business within the State of California, personal jurisdiction is established.

10. Venue is proper pursuant to 28 U.S.C. § 1391.

**PARTIES**

11. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California.

12. Midland is located in the City of San Diego, the County of San Diego, and the State of California.

13. Ocwen Loan Servicing, LLC is located in the City of Atlanta, State of Georgia.

14. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

15. Defendants are persons who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

16. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

17. Defendants, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

18. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

### FACTUAL ALLEGATIONS

19. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

20. At all times relevant, Defendants conducted business within the State of California.

21. Sometime before April 17, 2008, Plaintiff is alleged to have incurred certain financial obligations.

22. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

23. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

24. Sometime thereafter, but before April 17, 2008, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

25. Subsequently, but before April 17, 2008, the alleged debt was assigned, placed, or otherwise transferred, to Ocwen and Midland for collection.

- 1 26. On or about April 17, 2008, Ocwen mailed a dunning letter to Plaintiff. A few  
2 days later, Plaintiff received that letter.
- 3 27. This communication to Plaintiff was a "communication" as that term is  
4 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent  
5 with 15 U.S.C. § 1692g(a).
- 6 28. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)  
7 defines that phrase, and an "initial communication" consistent with Cal. Civ.  
8 Code § 1812.700(b).
- 9 29. Shortly after receiving this initial communication from Ocwen, on behalf of  
10 Midland, Plaintiff contacted Ocwen by telephone. During this conversation  
11 Plaintiff and Ocwen agreed that Plaintiff would pay a certain amount to settle  
12 the alleged account in full. Plaintiff did pay this amount by telephone through  
13 an electronic check and/or debit.
- 14 30. On or about August 21, 2008 Ocwen, on behalf of Midland, sent Plaintiff a  
15 letter acknowledging the settlement of the account and Plaintiff's payment.  
16 Defendants acknowledge the account was paid in full and release any  
17 additional amount alleged owing.
- 18 31. On or about Decmeber 3, 2008 Ocwen, on behalf of Midland, again sent  
19 Plaintiff another letter acknowledging the settlement of the account and  
20 Plaintiff's payment. Defendants acknowledge the account was paid in full  
21 and release any additional amount alleged owing.
- 22 32. Despite having settled the account, Defendants sold and/or transfered the  
23 remaining alleged balance to a third party SIMM Associates, Inc.
- 24 33. Through this conduct, Defendants used a false, deceptive, or misleading  
25 representation or means in connection with the collection of a debt.  
26 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §  
27 1692e(10).  
28

- 1 34. Through this conduct, Defendant used an unfair or unconscionable means to  
2 collect or attempt to collect any debt. Consequently, Defendant violated 15  
3 U.S.C. § 1692f.
- 4 35. Because this violated certain portions of the federal Fair Debt Collection  
5 Practices Act as these portions are incorporated by reference in the Rosenthal  
6 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,  
7 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 8 36. Plaintiff sent a written dispute to SIMM Associates, Inc. stating that the  
9 account had been paid and settled and requested proof of the amount alleged  
10 owed.
- 11 37. SIMM Associates, Inc. knowing the account was not owed stopped collecting  
12 on this alleged debt.
- 13 38. Despite knowing Plaintiff had paid this account and a balance was not owed,  
14 Midland again began attempting to collect on the alleged remaining settled  
15 balance of \$711.88.
- 16 39. On or about February 11, 2010, Plaintiff received a letter from Midland. This  
17 letter was a "communication" as 15 U.S.C. §1692a(2) defines that term, and a  
18 "debt collection" as that phrase is defined by Cal. Civ. Code § 1788.2(b).
- 19 40. Through this conduct, Defendant made a false representation concerning the  
20 character, amount, or legal status of a debt. Consequently, Defendant violated  
21 15 U.S.C. § 1692e(2)(A) as Midland knew the debt was settled and not  
22 legally owed.
- 23 41. Through this conduct, Defendant used a false, deceptive, or misleading  
24 representation or means in connection with the collection of a debt.  
25 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §  
26 1692e(10).
- 27  
28

42. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f.

43. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

44. On or about February 24, 2010, Plaintiff sent to Midland a letter in which Plaintiff advised Midland that Plaintiff wished Defendant to cease further communication with the Plaintiff in a manner consistent with the requirements pursuant to 15 U.S.C. § 1692c(c).

45. Midland received Plaintiff's letter disputing the debt, evidence that Plaintiff paid the account and a request to stop collection activity on February 25, 2010.

46. On or about March 2, 2010, Defendant telephoned Plaintiff in an attempt to collect the alleged debt after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c). Consequently, Defendant violated 15 U.S.C. § 1692c(c). Because this action violated the language in 15 U.S.C. § 1692c(c), Defendant also violated Cal. Civ. Code § 1788.17.

47. On or about March 11, 2010, Defendant telephoned Plaintiff in an attempt to collect the alleged debt after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c). Consequently, Defendant violated 15 U.S.C. § 1692c(c). Because this action violated the language in 15 U.S.C. § 1692c(c), Defendant also violated Cal. Civ. Code § 1788.17.

### COUNT I

### FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)



**15 U.S.C. §§ 1692 ET SEQ.**

48. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
49. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
50. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against each and every Defendant; statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against each and every Defendant; and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from against each and every Defendant.

**COUNT II****ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)****CAL. CIV. CODE §§ 1788-1788.32**

51. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
52. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA, including but not limited to each and every one of the above-cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32.
53. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a) against each and every Defendant; statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); against each and every Defendant and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from against each and every Defendant.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and



HYDE & SWIGART  
San Diego, California

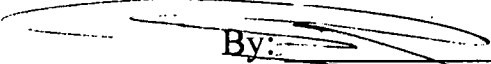
1 Plaintiff be awarded damages from Defendant, as follows:

- 2 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1)
- 3 against each and every Defendant;
- 4 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
- 5 1692k(a)(2)(A) against each and every Defendant;
- 6 • An award of costs of litigation and reasonable attorney's fees, pursuant
- 7 to 15 U.S.C. § 1692k(a)(3) against each and every Defendant;
- 8 • An award of actual damages pursuant to California Civil Code §
- 9 1788.30(a) against each and every Defendant;
- 10 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
- 11 § 1788.30(b) against each and every Defendant;
- 12 • An award of costs of litigation and reasonable attorney's fees, pursuant
- 13 to Cal. Civ. Code § 1788.30(c) against each and every Defendant.

14 54. Pursuant to the seventh amendment to the Constitution of the United States of  
15 America, Plaintiff is entitled to, and demands, a trial by jury.

16 Date: 3/23/10

Hyde & Swigart

17  
18 By:   
19 Joshua B. Swigart  
20 Attorneys for Plaintiff  
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JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Victor Catala

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart  
411 Camino Del Rio South Suite 301, San Diego, CA 92108  
619.233.7770

## DEFENDANTS

Midland Credit Management, Inc., and Ocwen Loan Servicing, LLC

County of Residence of First Listed Defendant San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10 CV 0662 WQH

WMC

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. § 1692 et seq.

Brief description of cause:  
FDCPA

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
75,000

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/24/10

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CR

ORIGINAL

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS011598  
Cashier ID: mbain  
Transaction Date: 03/26/2010  
Payer Name: HYDE AND SWIGART

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CIVIL FILING FEE  
For: CATALA V MIDLAND CREDIT  
Case/Party: D-CAS-3-10-CV-000662-001  
Amount: \$350.00  
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CHECK  
Check/Money Order Num: 3777  
Amt Tendered: \$350.00  
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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.